

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date: FEB 21 1990

NO PROTEST RECEIVED.
CASE CLOSED BY REVIEW
3-23-90.

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of

2/7/90

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[REDACTED]

attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Enclosures: 3

ENCLOSURE I

Information submitted disclosed that you were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Your purposes as set forth in the second article of your Articles of Incorporation are as follows:

To promote the general welfare of the members of the Association by maintaining and beautifying [REDACTED] by enforcing building and use restrictions when empowered to do so by the terms of such restrictions, and by engaging in such other activities not forbidden by the laws of the State of [REDACTED].

Your bylaws state that the association is formed to promote the general welfare of its members by maintaining and beautifying [REDACTED], in which its members own or possess real property, by enforcing building and use restrictions when empowered to do so by the terms of such restrictions, by promoting activities related to the general purpose of the Association, and by engaging in such other activities as are incidental thereto and not forbidden by the laws of the State of [REDACTED]. More specifically, the Association is formed to exercise control and jurisdiction over the Storm Sewer System and to operate and maintain the Storm Sewer System for the benefit of all members of the Association.

Membership in the Association shall consist of all of the fee owners of any land within the Industrial Park. Its income is from membership assessments and its disbursements are for normal operating expenses. There are [REDACTED] members in the association. They are all lot owners within the industrial park.

Your application for recognition of exemption and correspondence discloses that you administer and enforce restrictions preserving the architecture and appearance of the development. The association promotes activities related to the general purpose of the association. They receive conveyance and hold title to the Storm Sewer System to exercise control and jurisdiction over the storm sewer system, and to operate and maintain the storm sewer system for the benefit of all members of the association.

Section 501(c)(4) of the Code, provides, in part that "civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare" qualify for exemption under section 501(c)(4).

Section 1.501(c)(4)-1(a)(2) of the Income Tax Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization coming within the scope of this section is one that is operated to bring about civic betterments and social improvements.

Rev. Rul. 69-280, C.B. 1969-1 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt under section 501(c)(4) of the Code. The organization was operated primarily and directly for the benefit of individual members rather than for the community as a whole.

Rev. Rul. 74-17, 1974-1 C.B. 130, provides that an organization formed by the unit owners of a condominium housing project for the management, maintenance, and care of the common areas of the project, as defined by State Statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4). The organization's activities were for the private benefit of its members and it was not operated exclusively for the promotion of social welfare.

Similar to the organization described in Rev. Rul. 69-280, you administer and enforce restrictions preserving the architecture and appearance of the development. Furthermore, the maintenance and care of such constitutes the provision of private benefits for the lot owners.

It has been held that where the primary economic benefit from an organization is limited to that organization's members, the organization is not operated exclusively for the social welfare within the meaning of the statute. Consumer Farmer Milk Coop. v. Commissioner, 186 F. 2d 68 (CA2: 1950), affirming 13 Insurance Fund, 54 T.C. 1325, 1333 (1970).

[REDACTED]

Your organization stated in response to our letter dated January 13, 1990 that you feel your organization should be granted exemption because the storm sewer system is maintained by [REDACTED] instead of being an expenditure for the Township of [REDACTED]

We however do not agree with your rationale. The maintenance of your storm sewer system along with other activities for which your organization was formed constitutes a private benefit to individual lot owners. The primary benefit is a private self-help enterprise with only an incidental benefit to the community as a whole.

Any benefits to the community are not sufficient to meet the requirements of the regulations that the organization be operated primarily for the common good and general welfare of the people of the community. Like the organization described in Rev. Rul. 74-17, your organization's activities are for the administration of [REDACTED] and benefits its members as individuals and do not provide for the direct betterment of a community as a whole. Accordingly, we have concluded that you do not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.